

**Premier Residential Management Corporation and
Theresa Nachreiner. Case 30-CA-11440**

September 30, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon a charge filed by Theresa Nachreiner, an individual, the General Counsel of the National Labor Relations Board issued a complaint (amended on February 5, 1992, and March 13, 1992) against Premier Residential Management Corporation, the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. On January 17, 1992, and February 11, 1992, respectively, the Respondent filed answers to the complaint and to the amended complaint. On May 28, 1992, the Respondent filed a motion to withdraw answers.¹ By Order dated September 9, 1992, the motion was approved.

On September 11, 1992, the General Counsel filed a Motion for Summary Judgment. On September 15, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The undisputed allegations in the Motion for Summary Judgment disclose that the Respondent withdrew its answer to the complaint by motion on May 28, 1992, approved by order on September 9, 1992. Such a withdrawal has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be admitted to be true. See *Maislin Transport*, 274 NLRB 529 (1985).

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

¹ As its reason for this withdrawal, Respondent stated that it would be filing a petition for relief under ch. 7 of the United States Bankruptcy Code, that it has no assets with which to pay its creditors, and that, in light of its having no assets, Respondent does not intend to defend this action. It is well established, however, that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with offices and places of business in Oak Brook, Illinois, and Beloit, Madison, and Franklin, Wisconsin, has been engaged in real estate management, development, and rental services of residential properties. During the 12-month period ending December 31, 1991, the Respondent, in conducting its business operations, purchased and received products, goods, and materials valued in excess of \$50,000 from other enterprises, including oil companies, gas companies, electric companies, and other suppliers located within the States of Wisconsin and Illinois, each of which other enterprises had received the said products, goods and materials directly from points outside the States of Wisconsin and Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On June 25, 1992, the Respondent discharged the Charging Party, employee Theresa Nachreiner, because she engaged in protected concerted activities with other employees for the purpose of mutual aid or protection.

CONCLUSION OF LAW

By discharging employee Nachreiner and thereby interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(1) of the Act, we shall order the Respondent to offer employee Theresa Nachreiner immediate and full reinstatement to her former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed. We shall also order the Respondent to make Theresa Nachreiner whole for any loss of earnings or other benefits suffered as a result of her unlawful discharge, with backpay to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Finally, we shall

order that the Respondent remove from its records any reference to the unlawful discharge of Theresa Nachreiner, provide her with written notice of the removal, and inform her that the unlawful discharge will not be used as a basis for future personnel actions concerning her. See *Sterling Sugars*, 261 NLRB 472 (1982).

ORDER

The National Labor Relations Board orders that the Respondent, Premier Residential Management Corporation, Oak Brook, Illinois and Beloit, Madison, and Franklin, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they engaged in protected concerted activity.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Theresa Nachreiner immediate and full reinstatement to her former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharge of Theresa Nachreiner and notify her in writing that this has been done and that the unlawful discharge will not be used against her in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its facilities in Oak Brook, Illinois, and Beloit, Madison, and Franklin, Wisconsin, copies of the attached notice marked "Appendix."² Copies of

the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

tions Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge you or otherwise discriminate against you because you engage in protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Theresa Nachreiner full and immediate reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority and other rights and privileges, and WE WILL make her whole for any loss of earnings she may have suffered by reason of the discrimination practiced against her, with interest.

WE WILL remove from our files all references to the discriminatory discharge of Theresa Nachreiner and WE WILL notify her in writing that this has been done and that evidence of this unlawful conduct will not be a basis for future personnel actions against her.

PREMIER RESIDENTIAL MANAGEMENT
CORPORATION

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."